

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-2063

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DOCKET NO. 77-2063

AHARON RON,

Appellant,

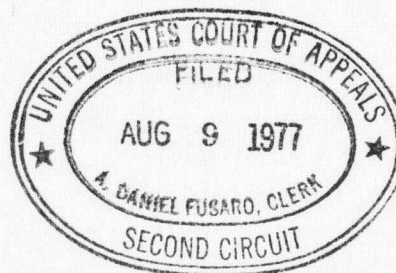
-vs-

GEORGE C. WILKINSON, Warden,
Federal Correctional Institution
Danbury, Connecticut, et al.,

Appellee

APPENDIX

Dennis E. Curtis
Stephen Wizner
Mary F. Keller
New Haven, Connecticut 06520
Counsel for Appellant



PAGINATION AS IN ORIGINAL COPY

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

AHARON RON,

Petitioner

-vs-

Civil No. 8-77-

GEORGE C. WILKINSON, Warden,
Federal Correctional Institution,
Danbury, Connecticut; and
NORMAN CARLSON, Director,
United States Bureau of Prisons

Respondents

APPLICATION TO PROCEED IN FORMA PAUPERIS

Petitioner, by counsel, respectfully moves this Court for permission to file the annexed petition for a writ of habeas corpus without payment of the filing fee and to proceed in this matter in forma pauperis pursuant to 28 U.S.C. section 1915. Petitioner's Affidavit of Indigency is attached hereto.

Petitioner's counsel in this proceeding are serving without fee.

AHARON RON

PETITIONER,

By:

Judith M. Hears
Judith M. Hears
Dennis E. Curtis
Stephen Wizner
Mary F. Keller
127 Wall Street
New Haven, Connecticut 06520
(203) 436-2210
Attorneys for Petitioner

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

AHARON RON,

Petitioner

-vs-

GEORGE C. WILKINSON, Warden,
Federal Correctional Institution,
Danbury, Connecticut; and
NORMAN CARLSON, Director,
United States Bureau of Prisons,

Respondent

Civil No. B-77-

AFFIDAVIT OF INDIGENCY

The undersigned Petitioner, by the annexed Application, respectfully moves the Court that he be permitted to file the accompanying petition with payment of the required filing fee, and to proceed in this matter in forma pauperis.

In support of this motion he states, under oath, that:

1. He has not sufficient funds with which to pay the filing fee and other costs.
2. He has no source of income other than his institutional work wages of per month from Danbury, F.C.I.
3. He is possessed of no property.
4. The balance in his commissary or other institutional account accounts is .

AHARON RON

Subscribed and sworn before me

this th day of February, 1977.

NOTARY

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

AHARON RON,

Petitioner,

-vs-

GEORGE C. WILKINSON, Warden,
Federal Correctional Institution,
Danbury, Connecticut; and
NORMAN CARLSON, Director,
Bureau of Prisons,

Respondents.

Civil No. B-77-

PETITION FOR A WRIT OF HABEAS CORPUS

Petitioner, complaining of Respondent, petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. §2241. Petitioner alleges that Respondents have deprived him of rights secured by the Fifth Amendment to the United States Constitution by depriving him of 90 days of statutory good time without due process of law. Petitioner alleges further and specifically that:

1. Petitioner is incarcerated at the Federal Correctional Institution, (F.C.I.) Danbury, Connecticut.
2. Respondent Wilkinson is the Warden and chief executive officer of Danbury, F.C.I., and has custody of Petitioner.
3. Respondent Carlson is the Director of the Bureau of Prisons and is ultimately responsible for the policies and practices of the Bureau of Prisons with respect to good time forfeiture.
4. Jurisdiction is conferred on this Court by 28 U.S.C. §2241.

5. Petitioner was convicted of violating 18 U.S.C. §§1341, 1342 and 2384 and of conspiracy to violate each. On April 9, 1973 the Honorable Charles L. Brieant, Jr. of the Southern District of New York imposed two consecutive sets of three concurrent five-year sentences, a total of ten years incarceration, all pursuant to 18 U.S.C. §4208(a)(2).

6. On September 14, 1976, Petitioner was found in an old farm building--a barn--with a visitor. Lexington's Correctional Supervisor, John Trench, submitted an incident report charging Petitioner with escape (prohibited act #101). Exhibit A.

7. A Unit Disciplinary Committee [UDC] met on September 15, 1976, modified the charges to escape (prohibited act #101) and being in an unauthorized area (prohibited act #402), and found Petitioner guilty of both charges. The UDC, comprised of Dr. Ross, Mary McCrosky and Carl Moses, referred the matter to the Institution Disciplinary Committee [IDC] and continued Petitioner in Administrative Detention. Exhibit B.

8. Petitioner does not communicate well in the English language.

9. Prior to Petitioner's IDC hearing, Correctional Counselor Carl Moses presented Petitioner with a Notice of the IDC Hearing, a Notice of his Rights Before the IDC Hearing, and a form for requesting representation at the IDC hearing. Petitioner did not understand the forms and refused to sign any except the one for requesting Counselor Moses as his representative. Upon information and belief, Counselor Moses called Dr. Ross to ask whether Petitioner could sign only the representative request form; Dr. Ross said Petitioner must sign all of the papers or none of the papers. Petitioner

continued to refuse to sign the Notices and accordingly was not permitted to request a representative.

10. Upon information and belief, the Notices which Petitioner refused to sign reflected that he was charged only with escape and being in an unauthorized area.

11. Petitioner did not have a representative at the IDC hearing, held on September 21, 1976. The IDC Report (Exhibit C) incorrectly states that Petitioner did not request anyone to appear on his behalf. Petitioner requested that Carl Moses represent him but was not permitted to complete the request form. See paragraph 9, supra.

12. Petitioner did not "admit the charges;" the IDC Report incorrectly states that he did. Exhibit C. Petitioner admitted only that he and his visitor were in the barn, not that he committed any offense.

13. Petitioner made the following statements to the IDC: (a) that he and his visitor had tried to talk in the visiting room; (b) that she was afraid to talk to him there; and (c) that they then left the visiting room and proceeded to the barn where they were found. These statements did not conform to the truth. As will be seen infra, Petitioner made these statements because he feared that the truth might harm Counselor Moses who had always been kind to Petitioner.

14. At the September 21 hearing, the IDC, comprised of E.R. Slaughter, D.E. Couchman and Ray W. McCroskey, amended the charges to exclude escape and to include, in addition to "being in an unauthorized area," unauthorized contact with the public (prohibited act #702) and conduct with

a visitor in violation of posted regulations (prohibited act #703). The IDC found Petitioner guilty of all charges and ordered forfeiture of 280 days statutory good time, transfer to a more secure institution and continued disciplinary segregation. Exhibit C.

15. Respondents never informed Petitioner either (a) what "posted regulation" his conduct with his visitor was alleged to have violated, or (b) specifically what conduct he was accused of, beyond presence in the barn.

16. Upon information and belief, the barn in which Petitioner was found is not off the Lexington reservation. Even if the barn is off the reservation, Petitioner did not know that fact on September 14, 1976.

17. In any event, the barn was not an "unauthorized area" for the Petitioner. Petitioner often used the barn to pray. Respondent Carlson, Lexington officials (specifically Counselor Moses), were aware of that fact and had given Petitioner express or implied authorization to be in the barn.

18. Upon information and belief, Mary McCrosky, a member of Petitioner's UDC, and Ray W. McCrosky, a member of Petitioner's IDC, are related.

19. Petitioner appealed the action of the ID to Lexington's Warden on October 8, 1976. Exhibit D. In a response dated October 26, 1976 the Warden modified the IDC findings to expunge the charge of unauthorized contact with the public (prohibited act #702), and reduced the number of days forfeited from 280 to 90. Exhibit E.

20. Petitioner has been denied 90 days statutory good time without due process of law because

- a. his IDC was not impartial;
- b. he was denied a representative he wanted and needed; he needed such a representative because he did not understand the proceedings and could not defend himself;
- c. he did not receive adequate notice of the charges against him; and
- d. the charges are without foundation and the finding of guilty on those charges was unreasonable, arbitrary and capricious.

21. Had Petitioner been accorded the procedural protections to which he was entitled, particularly adequate notice and a representative, he would have made the following showing at the IDC hearing:

- a. that he did not escape;
- b. that his visitor was an authorized visitor;
- c. that he did not conduct himself with his visitor in a manner violative of any posted regulation;
- d. that the barn was not an unauthorized area, as set out in paragraphs 15 and 16, supra; and
- e. that the events culminating in Petitioner's being found in the barn with his visitor, Mrs. Duckworth, were completely innocent, as follows: At approximately 8:45 p.m. on September 14, 1976, Petitioner was

leaving the main entrance of the main building at Lexington. Point A on Exhibit F. (Exhibit F is a rough map of the Lexington grounds, drawn from Petitioner's memory. "Point" and "Path" references refer to notations on that map.) He saw Mrs. Duckworth walking toward the building from the visitor's parking lot, where she had parked her car. Petitioner walked with her to a bench where inmates were permitted to sit and talk with visitors. Point B. Petitioner asked her to wait there for him while he walked to Atwood Hall in order to ask his Counselor, Carl Moses, for permission to speak with Mrs. Duckworth privately in that building. Petitioner was unable to speak with Counselor Moses and began to walk back from Atwood Hall to the bench where Mrs. Duckworth was waiting. Point B. Before Petitioner reached her, Mrs. Duckworth, apparently frightened by another inmate, began to run in the general direction of the barn. Point C; Path D. Petitioner, concerned for her well-being, ran after her. Path E. She ran into the barn and he followed her. While Petitioner and Mrs. Duckworth were running, someone reported that two inmates were running away. Correctional Supervisors Trench and Galey quickly followed Petitioner and Mrs. Duckworth to the barn.

Petitioner was frightened and confused when he realized that he was being pursued; he attempted to hide behind a feed trough because he was frightened and for no other reason.

22. Petitioner has exhausted his administrative remedies. Exhibits G and H.

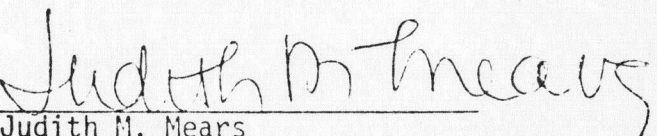
WHEREFORE, for all of the foregoing, Petitioner respectfully requests that this Court:

1. Issue a writ of habeas corpus discharging Petitioner from custody unless Respondents (a) expunge all record of Petitioner's being found guilty of any offense relating to the events of September 14, 1976, and (b) restore all of Petitioner's forfeited good time; and
2. Grant such other and further relief as may in the Court's judgment appear just, proper, and equitable.

Respectfully submitted,

AHARON RON, Petitioner

By:


Judith M. Mears
Dennis E. Curtis
Stephen Wizner
Mary F. Keller
127 Wall Street
New Haven, Connecticut 06520
(203) 436-2210
Attorneys for Petitioner

On Petition:
Joseph S. Genova '77
Yale-Danbury Project

CERTIFICATION

I hereby certify that a true copy of the foregoing Petition for a Writ of Habeas Corpus has been mailed, postage pre-paid to the office of the United States Attorney, 915 Lafayette Boulevard, Bridgeport, Connecticut 06604, this day of March, 1977.

1. NAME OF INSTITUTION
FBI, Lexington

2. NAME OF INMATE - JAMES E. BROWN	3. REGISTER NUMBER 77884-158	4. DATE OF INCIDENT 14 Sept 76	5. TIME 9:05PM
6. PLACE OF INCIDENT INMATE BAY NORTH OF POL LEXINGTON,	7. ASSIGNMENT Food Service	8. QUARTERS Atwood Hall (CHU)	
9. INCIDENT INMATE BROWN WAS IN THE INMATE BAY NORTH OF POL LEXINGTON, VA. HE WAS OBSERVED MOVING NORTH OF ATWOOD HALL. MR. J. SALLY, ACTING S, AND I RESPONDED BY TAKING AN INSTITUTION VEHICLE AND DRIVING TO THE AREA IN QUESTION. WE PARKED THE VEHICLE IN THE EAST BUILDING SEVERAL HUNDRED YARDS NORTH OF THE REGISTRATION. WHILE INVESTIGATING THE BUILDING I FOUND INMATE BROWN ATTEMPTING TO HIDE BY LYING IN A TRENCH. WHEN BROWN STOOD UP I NOTICED ANOTHER PERSON CROUCHED AT THE END OF THE TRENCH. THIS PERSON WAS IDENTIFIED AS MR. LOUANN LUCAS, NORTH, RESIDES IN 158. INMATE BROWN IS PLACED IN WH-3 FOR PENDING INVESTIGATION.	10. CODE 158		
11. DESCRIPTION OF INCIDENT			
12. SIGNATURE OF REPORTING EMPLOYEE <i>John L. Trench</i>			
13. NAME AND TITLE (PRINTED) John L. Trench, Correctional Supervisor		14. INCIDENT REPORT DELIVERED TO ABOVE INMATE BY <i>John L. Trench</i>	
15. DATE INCIDENT REPORT DELIVERED 14 Sept 76		16. TIME INCIDENT REPORT DELIVERED 9:10 PM	

17. COMMENTS OF INMATE TO COMMITTEE REGARDING ABOVE INCIDENT:		
18. IT IS THE FINDING OF THE COMMITTEE THAT: ("X" APPLICABLE BOX)		
☐ YOU COMMITTED THE PROHIBITED ACT AS CHARGED	☐ YOU COMMITTED THE FOLLOWING PROHIBITED ACT: 	☐ YOU DID NOT COMMIT A PROHIBITED ACT
19. COMMITTEE FINDINGS ARE BASED ON THE FOLLOWING INFORMATION:		
20. COMMITTEE ACTION		
21. DATE OF ACTION		
CHAIRMAN	MEMBER	MEMBER

TO INMATE WITHIN 24 HOURS OF PART 1 PREPARATION

US DEPARTMENT OF JUSTICE
BUREAU OF PRISONS

DATE Sept. 21, 1976

TIME 3:40 p.m.

INSTITUTION DISCIPLINE COMMITTEE REPORT

NAME OF INMATE RON, Aaron

REG NR 77884 158

THE INMATE HAS BEEN ADVISED OF HIS RIGHTS BEFORE THIS COMMITTEE.

☒ A COPY OF THE ADVISEMENT OF RIGHTS FORM IS ATTACHED.

THIS HEARING IS HELD TO CONSIDER THE INCIDENT REPORT(S) DATED _____

September 14, 1976

THE FOLLOWING PERSONS APPEARED BEFORE THIS COMMITTEE:

None requested.

SUMMARY OF STATEMENTS MADE AND INFORMATION PRESENTED TO THE COMMITTEE:

INMATE ADMITS THE CHARGE(S): ☒ YES ☐ NO

- .. Mr. Ron has refused to sign the Notice of the IDC Hearing, as well as his Rights Before the IDC Hearing. His rights were read to him by Correctional Counselor Carl Moses. His rights before the IDC were again read to him by the IDC Chairman. He acknowledged he was aware of his rights. Mr. Ron reported that the statement of the Incident Report was true in that he was found in an old farm building several hundred yards north of the reservation, and was with a visitor identified as Mrs. Louann Duckworth. Inmate Ron stated that he tried to talk with his visitor, Mrs. Duckworth, in the Visiting Room, but she was afraid to talk with him there. They then left the Visiting room, and proceeded to the barn where they were found. Inmate Ron denied any sexual acts occurred, stating that they were just visiting.

THE COMMITTEE FINDS THAT:

☐ THE ACT WAS COMMITTED AS CHARGED.

☒ THE FOLLOWING ACT WAS COMMITTED:

☐ NO PROHIBITED ACT WAS COMMITTED (IF THIS IS THE FINDING, THIS REPORT AND ALL RELATED REPORTS WILL BE DESTROYED).

Being in an Unauthorized Area - 402; Unauthorized Contact With the Public - 702; Conduct With a Visitor in Violation of Posted Regulations - 703.

ACTION TAKEN:

Forfeit Two Hundred Eighty (280) days Statutory Good Time and TRANSFER to a more secure institution for custody and adjustment purposes. Remain restricted to WH-3.

REASON FOR ACTION TAKEN:

Seriousness of violation.

☒ THE INMATE HAS BEEN ADVISED OF THE FINDINGS AND ORDERS OF COMMITTEE.
☒ THE INMATE HAS BEEN ADVISED OF HIS RIGHTS TO APPEAL THIS ACTION WITHIN 30 DAYS, TO THE CEO. ☒ A COPY OF THIS REPORT HAS BEEN GIVEN TO THE INMATE.

E. R. Slaughter

(CHAIRMAN)

E. R. Slaughter

D. E. Couchman

(MEMBER)

D. E. Couchman

Ray W. McCroskey

(MEMBER)

Ray W. McCroskey

IF THERE IS INSUFFICIENT ROOM FOR ANY ITEM, IT SHOULD BE CONTINUED ON AN ATTACHED SHEET.

BP-15-115
9/14

EXHIBIT C

FEDERAL BUREAU OF PRISONS
REQUEST FOR ADMINISTRATIVE REMEDY

INSTRUCTIONS
TYPE OR USE BALL
PEN IF MORE SP
NEEDED. USE ATTACH
SHEET FOR QUADRU

NOV 17 1976

*To: Warden of Institution

Regional Director, Bureau of Prisons

From:

Ron, Aharon

LAST NAME FIRST, MIDDLE INITIAL

77881-158

D

REG. NO.

Danbury, Conn

INSTITUTION

Part A—INMATE REQUEST

I was in the F.C.I. Ky., when I received an incident report for the charge of escape, dated 14 Sept. 76, under code 101.

On Sept 15, 1976 committee action was taken, and the charge was then in violation of code 101 and 402, I was then continued in Admin. Detention and was then referred to the I.D.C. Board.

On 21 Sept. 76, I.D.C. Hearing was had, and the action taken was, forfeiture of 280 days, and a transfer to a more secure institution for custody and adjustment purposes. And then the charge was for violation of code 402 - 702 - 703. No incident report was written for these charges, I was charged for the crime of escape, Code 101, not for the above named codes.

So therefore, I feel that the punishment does not meet the charge, I'm asking that these charges be expunged from my record and the 280 days be restored.

October 8, 1976

DATE

SIGNATURE OF REQUESTOR

Part B—RESPONSE

See above for details - 10/8/76

11/3/76

DATE

DEPARTMENT HEAD OR REPRESENTATIVE

WARDEN, ASSOCIATE, OR REGIONAL DIRECTOR

ORIGINAL: TO BE RETURNED TO THE OFFENDER AFTER COMPLETION.

Part C—RECEIPT

Return to:

LAST NAME, FIRST, MIDDLE INITIAL

REG. NO.

INSTITUTION

I acknowledge receipt this date of a complaint from the above inmate in regard to the following:

10/8/76

DATE

RECIPIENT'S SIGNATURE (STAFF MEMBER)

Request for Administrative Remedy
Response -- RON, Aharon
Reg. No. 77884-158(D)

10-26-76

A review of your recent incident indicates that you were charged with escape (101) on your incident report dated 9-14-76. Subsequently, on 9-15-76, your unit team indicated that you were charged with escape (101) and being in an unauthorized area (402); they referred the matter to the IDC.

On 9-21-76, the IDC indicated that you were not guilty of escape (101). They, following their investigation, found you guilty of being in an unauthorized place (402); unauthorized contact with the public (702); and conduct with a visitor in violation of posted regulations (703).

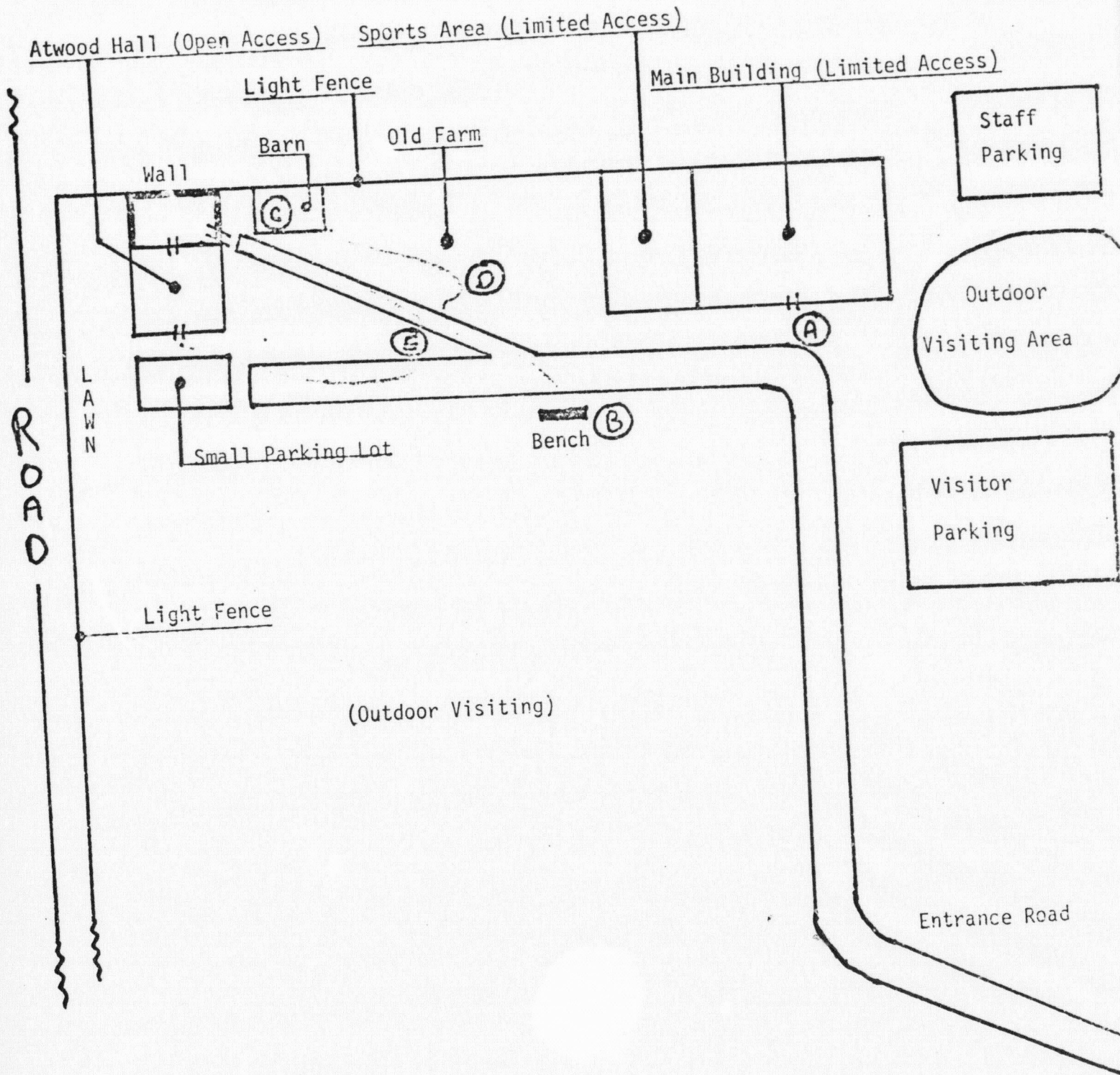
However, it is appropriately within the purview of the IDC, upon their deliberations, to modify and/or adjust the charges to describe the prohibited acts committed. The IDC did in fact make such an adjustment by expunging the escape charge and modifying it to your having unauthorized contact with (702) and conduct with a visitor (703) that is in violation of posted regulations.

My investigation indicates that you were charged with being in an unauthorized place (402) and conduct with a visitor in violation of posted regulations (703). Inasmuch as Ms. Duckworth was an authorized visitor, the charge of unauthorized contact with the public (702) is to be expunged from your records.

While your offense in itself is a serious violation of institution procedures and the IDC acted in a responsive and responsible manner, my investigation indicates that your offense warrants a loss of good time not to exceed ninety (90) days. Accordingly, your forfeited good time shall be reduced to 90 days. In addition, charge 702 is to be expunged from your record.

EXHIBIT E

MAP, DRAWN FROM PETITIONER'S MEMORY, OF THE
GROUNDS AT F.C.I., LEXINGTON, KENTUCKY



Note: Map not necessarily to scale.

EXHIBIT F

Appeal of B.P. 9
Dated 10/8/76

Sir.

Im appealing the answer of my B.P 9, dated 10/8/76 for the answer I was given is un true and I still was not given Due Prosses of Law afforded me by the 11th Ammt. of the constitution of the United States, I want to bring to your attention that I was denied my rights at the IDC by no understanding the proceedings and was not allowed to call witness in my defence, I make this clear to the panel that I did not understand what was taking place before my hearing started, Also the abuse that was given me in violation Of my 8th Ammt. Cruel Punishment.

As you will note by the attacted response of my BP. 9 Dated 10/8/76 you will notice all charges were expunged from records other than (402) being in an unathorized Place, I state that I was not in an Unathorized area for I have been in the same area my full stay at Lexington Ky. Not only the area in question was not an unauthorized area I also stuidied often in said area, I also want to point out to Reg. That said area in within the conponds of the facility, (402) is no more than a charge for the Admini- stration to hang there hats on, So I pray to you that this charge also be expunged from my record and that the 90 day taken away from me be returned to me, If this Appeal should be deined for any reason I wish to waiver the B.P. 11 and except it as a denial so that I can look for relife in the Coursts.

Sincerely Yours

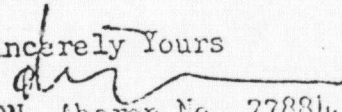

RON, Aharon No. 77834-158(D)

EXHIBIT 6

BP-DIR-9
9-73

2886

FEDERAL BUREAU OF PRISONS

APPEAL

RESPONSE FOR ADMINISTRATIVE REMEDY REQUEST

INSTRUCTIONS:
TYPE OR USE BALL POINT
PEN. IF MORE SPACE IS
NEEDED, USE ATTACHMENT
SHEET IN TRIPLICATE.

To: Director, Bureau of Prisons

From:

Ron, Aharon

Dec

77884-158 (D)

Danbury

REG. NO.

INSTITUTION

LAST NAME, FIRST, MIDDLE INITIAL

*Part A—REASON FOR APPEAL:

After receiving and reviewing your response to my B.P. 10, I can find no rational or just criteria for not having my charge of being in an unauthorized area (402) expunged from my record.

I would like to reiterate and clarify those aspects that I believe should exonerate me of this erroneous charge. The area I was in, is in the immediate proximity of where I lived while incarcerated at Lexington. I also studied in this area and went to school there almost every day. I was not cognizant of the fact that I was committing any infraction of the institution rules when I went to this area. I earnestly felt that since I spent so much time in this area and lived right near it that I was still within the institution compound.

Having this charge expunged from my record and getting back my ninety days good time, is extremely important to my parole status. As long as this erroneous charge is on my record, and good days with-held, I can not be reviewed for parole. It appears quite preposterous to me to charge me with being in an unauthorized area, an area where I spent most of my day and lived. I request that you rescind this charge and return my with-held good days.

December 14, 1976

DATE

SIGNATURE OF REQUESTOR

*THE COMPLETED FORM NO. BP-DIR-9 MUST ACCOMPANY THIS APPEAL.

Part B—RESPONSE

On 9/21/76 the IDC found that you committed the following prohibited acts: being in an unauthorized area (402); unauthorized contact with the public (702); and conduct with a visitor in violation of posted regulations (703). As a result of the Warden's response to your IDC appeal, the 702 charges was deleted and the amount of forfeited good time was reduced to 90 days. The basis of this appeal is your contention that you were not aware you were in an unauthorized area. On 9/14/76 you and a female visitor were found in an old barn several hundred yards north of the reservation. Clearly this was an unauthorized area for visitation purposes. Your argument that you were not aware that the barn was off limits is not persuasive. When you were discovered in the barn there is evidence that both you and Ms. Duckworth attempted to conceal yourselves. This indicates that you were both aware that you were in an unauthorized area. We conclude that the findings of the IDC on the

SIGNATURE OF DIRECTOR OR HIS REPRESENTATIVE

DATE

(see page 2)

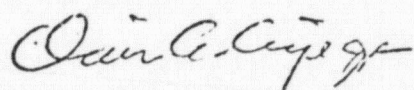
ORIGINAL: TO BE RETURNED TO OFFENDER AFTER COMPLETION.

EXHIBIT II

Page 2
Central Office
Administrative Remedy # 2896
Ron, Aharon 77884-153
FCI, Danbury

charge of being in an unauthorized area are supported by substantial evidence.
Your appeal is denied.

February 23, 1977



CLAIR A. CRIPE
General Counsel
Federal Bureau of Prisons

Low fee
FILED

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MAY 10 10 28 AM '77

U.S. DISTRICT COURT
BRIDGEPORT, CONN.

AHARON RON

v.

GEORGE C. WILKINSON, Warden,
Federal Correctional Institution,
Danbury, Connecticut, et al

CIVIL #B-77-141

JUDGMENT

This cause came on for consideration on a Petition For A Writ Of Habeas Corpus and the Court having filed its Memorandum Of Decision under date of May 6, 1977, dismissing said petition,

It is accordingly ORDERED, ADJUDGED and DECREED that judgment be and is hereby entered in favor of the respondents and the Petition For A Writ Of Habeas Corpus is dismissed.

Dated at Bridgeport, Connecticut, this 10th day of May, 1977.

SYLVESTER A. MARKOWSKI, Clerk

By:

Vincent R. DeRosa
Vincent R. DeRosa
Deputy-in-Charge

MAY 6 11 49 AM '77

U.S. DISTRICT COURT
NEW HAVEN, CONN.
UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

AHARON RON

V.

GEORGE C. WILKINSON, WARDEN,
FEDERAL CORRECTIONAL
INSTITUTION, DANBURY,
CONNECTICUT, ET AL

CIVIL NO. B77-141

MEMORANDUM OF DECISION

Petitioner, an inmate at Federal Correctional Institution, Danbury, complains that he has been unlawfully denied ninety days of good time.

Prior to petitioner's transfer to FCI, Danbury, he was incarcerated at FCI, Lexington, Kentucky. On September 14, 1976, at FCI, Lexington, petitioner was discovered hiding behind a feed trough in a prison farm building with a female visitor. Prison documents submitted with the petition describe the barn as being "several hundred yards north of the reservation."

Prison officials have already reduced the charges initially lodged against petitioner for this incident, and the sanctions originally imposed have also been reduced. Petitioner's disciplinary record now reflects only a finding of guilt on the charge of being in an unauthorized place. Ninety days good time has been forfeited.

Petitioner contends that he has been denied due process because (1) the Institution Disciplinary Committee

(IDC) that imposed the sanction was not impartial, (2) he was not represented before the IDC, (3) he received inadequate notice of the charges against him, (4) the charges are without foundation, and (5) the finding of guilt was arbitrary and capricious.

These claims are without merit. Petitioner's complaint states that he was given written notice of the charges against him prior to the IDC hearing. Beyond the conclusory allegation of lack of impartiality, no facts are alleged to indicate that bias infected the IDC. The incident that triggered the disciplinary action is largely undisputed. Petitioner admits he was hiding in the barn with a visitor. He only disputes whether the building was an authorized area or whether he was aware that it was unauthorized.

As to this issue, the response to petitioner's administrative remedy appeal, together with plain common sense, seems dispositive. The Bureau of Prisons' response states, "you and a female visitor were found in an old building several hundred yards north of the reservation. Clearly this was an unauthorized area for visitation purposes." (emphasis supplied). Whether petitioner was permitted to be in the barn on other occasions is of little significance. Access to areas within prison compounds obviously varies depending upon the time of day and the nature of the inmate activity. The prison need not post a sign wherever visitation is not permitted in order to discipline an inmate who hid with a visitor in an area distant from the location provided for routine visits.

The only issue that even approaches a colorable claim is petitioner's allegation that he was denied a representative at the IDC hearing. According to petitioner's complaint, he was given three documents prior to the IDC hearing: (1) a notice of the hearing, (2) a notice of petitioner's rights in connection with the hearing, and (3) a form for requesting representation at the hearing. Petitioner contends that he could not understand these forms. Despite this purported lack of understanding, petitioner was able to discern the difference between the documents, and refused to sign the first two, while asserting a right to sign the third. The prison evidently interpreted petitioner's behavior as obstructive, and took the position that he had to sign the documents acknowledging that he had been duly notified in order to sign the representation request. Neither side capitulated, and the hearing ensued.

The foregoing description of the facts in this case is petitioner's version. Even on these facts, no denial of constitutional rights is shown. The Constitution does not give petitioner a right to counsel at a prison disciplinary hearing. See, e.g., Wolff v. McDonnell, 418 U.S. 539 (1974). Bureau of Prisons Policy Statement 7400.5C provides, however, that an inmate "will be provided the service of a full-time staff member to represent him at the hearing . . . should he so desire." Arguably, petitioner's IDC hearing did not conform precisely to the procedural requirements set forth in the Policy Statement. However, petitioner's recalcitrance

in not acknowledging the notice forms prepared by the prison to protect other procedural rights of petitioner's substantially undermines his complaint about the FCI's failure to act upon the one form he was willing to sign. Moreover, the lack of representation does not appear to have resulted in any prejudice. Having conceded his presence in the barn petitioner's only defense to the charge of being in an unauthorized place, as I understand it, could not have been argued persuasively by even the most forceful advocate.

No denial of due process having been demonstrated the petition is dismissed. The papers may be filed without fee.

Dated at New Haven, Connecticut, this 6 day of May, 1977.

Jon O. Newman
Jon O. Newman
United States District Judge

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U. S. DISTRICT COURT
NEW HAVEN, CONN.UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

AHARON RON,

-VS-

GEORGE C. WILKINSON, WARDEN,
FEDERAL CORRECTIONAL INSTITUTION,
DANBURY, CONNECTICUT ET AL:
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:

Civil No. B77-141

MOTION TO RECONSIDER

The petitioner in the above-captioned case, by counsel, hereby moves this Court to reconsider the dismissal, entered on May 6, 1977, of his Petition for a Writ of Habeas Corpus, and will file a memorandum in support of this motion on or before May 17, 1977.

THE PETITIONER

BY: Judith M. Mears

Judith M. Mears
Dennis E. Curtis
Mary F. Keller
Stephen Wizner
127 Wall Street
New Haven, Connecticut 06520
(203) 436-2210

May 16, 1977

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed to the Office of the United States Attorney, 270 Orange Street, New Haven, Connecticut 06510, this 16th Day of May, 1977.

Judith M. Mears

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

AHARON RON,

-VS-

GEORGE C. WILKINSON, WARDEN,
FEDERAL CORRECTIONAL INSTITUTION,
DANBURY, CONNECTICUT ET AL

Civil No. B77-141

MEMORANDUM IN SUPPORT
OF MOTION TO RECONSIDER

This Court dismissed the Petition for a Writ of Habeas Corpus in the instant case on May 6, 1977. On May 16, 1977. On May 16, 1977 the petitioner filed a Motion to Reconsider, and this memorandum is submitted in support of that motion. Petitioner directs the attention of the Court to three specific issues.

- I. Petitioner Never Had Notice Of The Fact That The Barn Where He And His Visitor Were Found Was An Unauthorized Area For Visitation Purposes.

In his Petition, the petitioner alleged ^{1/} (1) that he was never told or warned that the barn where he and his visitor were found was an "unauthorized" area (2) that he often used the barn to pray and (3) that staff members at FCI, Lexington knew that petitioner used the barn to pray and had given him express or implied authorization to be there. Based on these allegations, which have not been contraverted, petitioner reasonably assumed that his presence in the barn with his visitor would not constitute an "unauthorized" use of the premises. He had never been told he could not go to the barn with a visitor; neither did he consider that he and his visitor were "hiding" in the barn since Lexington officials knew he often went there and located him there easily.

^{1/} Paragraphs 1'-17 of Petition.

-2-

In a minimum security facility such as Lexington, inmate visitation is not limited to one room. Visitors and inmates may conduct their visits in relaxed settings over a wider geographical area. Given this factual context, the presence of petitioner and his guest in the barn -- a place where petitioner often went alone, with the knowledge and acquiescence of FCI officials -- should not be deemed a prima facie offense to which the defense of lack of notice is not available.^{2/} Petitioner received no notice that the barn was "off limits" for visiting, and the requirements of the Due Process clause of the United States Constitution require such notice.

II. Petitioner's Disciplinary Hearings Were Not Conducted By Impartial Staff Members.

The Court's Memorandum of Decision disposed of petitioner's claim concerning the lack of impartiality at his institutional disciplinary hearings by noting (at p. 2), "Beyond the conclusary allegation of lack of impartiality, no facts are alleged to indicate that bias infected the IDC. No reference is made to the petitioner's allegation ^{3/} that, "Upon information and belief, Mary McCrosky, a member of petitioner's IDC, are related."

Petitioner contends that the presence of close relatives on the sanction recommending UDC and the decision making IDC render the latter impartial as a matter of law Morrissey v. Brewer, 408 U.S. 471, 486 (1972) held that, after the arrest of a parole violator, the determination that reasonable

^{2/} The Court's Memorandum of Decision seems to imply, in the last sentence on p. 2, that the lack of notice, while admitted, is not legally significant because the petitioner should, in effect, have known he didn't belong where he was found.

^{3/} Paragraph 16 of Petition.

ground exists for revocation of parole should be made by someone not directly involved in the case. Such a guarantee was held necessary as a matter of constitutional law because "(the) officer directly involved in making recommendations cannot always have complete objectivity in evaluating them."

This principle has been extended in at least two circuits to prison disciplinary procedures. In Meyers v. Allredge, 492 F.2d 296 (3d Cir. 1974), the court reversed a dismissal of Lewisburg inmates' complaint alleging that procedures involved in revocation of their good time following a prison strike violated their constitutional rights. The Court relied on the fact that an Associate Warden had been a member of both the Adjustment Committee, which recommended forfeiture of good time and the GTF, which decided the question. Based on the facts of the case, this was held to have rendered the hearing impermissibly partial. See also U.S. Ex Rel Miller v. Twomey, 479 F.2d 701 (7th Cir., 1973) (holding that minimum due process in an in-prison disciplinary hearing requires a factual determination by a person or persons other than the officer who reported the infraction). Additionally in Wolff v. McDonnell, 418 U.S. 539, 568-70), the Supreme Court assumed that at least some impartiality is needed in the committee charged with making a decision on the forfeiture of good time, although no violation was found in that respect.

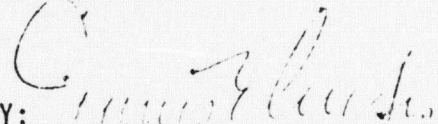
III. Petitioner Was Not Accorded A Representative At His IDC Hearing, Contrary To Bureau Of Prisons Regulation and Constitutional Guarantees.

The Court cited Wolff v. McDonnell, 418 U.S. 539 (1974) for the proposition that the Constitution does not give the petitioner a right to counsel at a prison disciplinary hearing. However, Wolff seems to suggest that when an illiterate is involved, or when the subject matter is complex, a

nsel-substitute may be required, 418 U.S. at 570. As set forth in paragraph 8 of the Petition, petitioner does not communicate well in the English language; his spoken English is poor and his written English is virtually nonexistent. His need for a representative at his disciplinary hearing was unique and pressing. Though he did concede his presence in the barn, the plausibility of the factual sequence about how he and his visitor ended up there as well as his prior history of approved barn visits (the "unauthorized area for visiting" issue) were important points which demanded forceful presentation. Petitioner was denied such representation although he requested it and although the Bureau of Prisons believes he should have had it. A retrospective 'no prejudice' test applied on a case-by-case basis to determine whether or not a prisoner was harmed when he was denied a representative impermissibly shifts the burden to the petitioner to make an after-the-fact demonstration of the nature and extent of his harm on the basis of no better reason than the prison system's administrative pique in denying him such a representative in the first place. Neither Bureau of Prisons Policy Statement 7400.5C nor the Constitution countenance such a result.

WHEREFORE, the petitioner respectfully moves this Court to vacate its earlier dismissal of his Petition, reconsider the instant issues, and grant the relief prayed for in his Petition.

THE PETITIONER

BY: 

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Dennis E. Curtis
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(203) 436-2210
Attorneys for Petitioner

-5-

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed to the Office of the United States Attorney, 270 Orange Street, New Haven, Connecticut 06510, this 17th Day of May, 1977.

MICROFILM

JUN 7 1977

BRIDGEPORT

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

AHARON RON,

Petitioner,

-VS-

GEORGE C. WILKINSON, Warden
Federal Correctional Institution,
Danbury, Connecticut, et al.,

Respondent.

Civil No. B 77-141

NOTICE OF APPEAL

Notice is hereby given that Aharon Ron, petitioner above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the May 6, 1977 dismissal of his Petition for a Writ of Habeas Corpus, and the May 25, 1977 denial of the Motion to Reconsider.

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Attorney for Aharon Ron

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U.S. DISTRICT COURT
NEW HAVEN, CT

JUN 7 4 30 PM '77
U.S. DISTRICT COURT
NEW HAVEN, CT

5/6/77
Curtis
Warden
George C. Wilkinson
Federal Correctional Institution
Danbury, Connecticut